

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

**IN RE: SPECIALIZED BUSINESS DOCKET
OF 17TH CIRCUIT COURT**

**LOCAL ADMINISTRATIVE
ORDER: 2011-05**

At a session of said Court, held in the Kent County Courthouse
In the City of Grand Rapids in said County.
October 18, 2011

Present: Hon. Donald A. Johnston
Chief Circuit Judge

The 17th Circuit Court will implement a Specialized Business Docket (hereinafter "SBD") Pilot Project, commencing March 1, 2012¹ (the "Commencement Date") and remaining in effect until December 31, 2014² (the "Expiration Date"), or further order of this Court. The pilot project is being established to study the effectiveness of implementing a specialized docket for the handling of business³-related litigation of all types in lieu of traditional case file management. The Court will monitor the effectiveness of this pilot project, and report on its progress from time to time as requested by the State Court Administrative Office.

This administrative order is issued in accordance with Kent County Administrative Order 2011-04 (Case Flow Management Plan).

¹ Or such other date thereafter as determined by the Chief Judge.

² Or such other date thereafter as determined by the Chief Judge.

³ For purposes of this Order and the SBD generally, "business" shall be broadly defined to include, but shall not be limited to, "a commercial enterprise carried on for profit," *see* BLACK'S LAW DICTIONARY 226 (9th ed 2009), such as a sole proprietorship, partnership, limited liability partnership or company, or corporation.

I) Introduction and Purpose

Following the majority of the recommendations of the State Bar of Michigan's Judicial Crossroads Task Force Business Impact Committee, the purposes of the SBD are to: (i) reduce the time required to resolve business-related legal disputes in Kent County; (ii) promote consistency in decisions rendered in business-related cases; (iii) improve the overall efficiency in administering and processing business cases in the Kent County Circuit Court; and (iv) develop a body of case law on business law issues at the trial court level in order to provide guidance to the local business community and business law practitioners. The Michigan Court Rules (hereinafter "MCR") govern all aspects of cases involved in this pilot project. The right to trial by jury is preserved and, if properly demanded, will proceed in the same fashion as in the general Civil Division, as will non-jury trials. Appeals from cases handled on the SBD will be to the Court of Appeals, as with any other Circuit Court case.

II) Cases to be Assigned to the Specialized Business Docket

A) The following types of cases,⁴ whether qualifying by complaint, counter-claim, cross-claim, or third-party complaint,⁵ shall be assigned to the SBD:

1. Business governance/internal affairs, including shareholder derivative and oppression suits;
2. Business torts (business plaintiff and business defendant);
3. Antitrust law;
4. Intellectual property;
5. Trade secrets between businesses;
6. Securities law;
7. Commercial real estate disputes between businesses;
8. Business-to-business disputes, including contracts, construction disputes, and employment matters;
9. Environmental law (with business plaintiff or business defendant);
10. Environmental insurance;
11. Collection of professional fees;
12. Commercial insurance indemnification claims;
13. Malpractice claims brought by businesses against attorneys, accountants, architects, or other nonmedical professionals;
14. Commercial insurance coverage disputes;
15. Commercial insurance declaratory judgments;

⁴ Assuming such cases otherwise meet the threshold requirements for circuit court jurisdiction.

⁵ See MCR 2.111(B).

16. Employment law matters, including employer/employee noncompetition, nondisclosure, and non solicitation agreements, and wrongful termination;
17. Individual business owner versus non individual-owned business;
18. Divorce cases in which a major asset of the marriage is an interest in a closely-held business;⁶ and
19. Matters subject to compulsory arbitration if involving any of the above subjects.

B) Cases expressly excluded from the SBD include, but are not limited to, the following:

1. Products liability;
2. Personal injury and wrongful death;
3. Medical malpractice;
4. Commercial landlord versus consumer tenant;
5. Noncommercial real estate matters;
6. Actions by consumers against businesses and businesses against consumers;
7. Commercial class actions and proceedings to enforce judgments thereunder;
8. Occupational health and safety matters; and
9. Matters subject to compulsory arbitration if involving any of the above subjects.

C) Any case assigned to the SBD shall be subject to removal by the SBD Judge for good cause to the civil/criminal or family docket, whichever is appropriate, either on motion of a party or *sua sponte*, as provided in paragraph V(B). A newly filed case so removed will be reassigned by lot to a judge of the appropriate division. A case found to have been inappropriately referred to the SBD by another judge will be reassigned back to that judge.

III) The Specialized Business Docket Judge

A) The Honorable Christopher P. Yates, who, in addition to his other qualifications, has a University of Illinois MBA degree, is assigned as the "SBD Judge."

B) As of the date of this Order, Judge Yates shall retain his current Family and Civil/Criminal Division cases. Effective December 31, 2011⁷ (the "Cut-Off

⁶ Such cases shall be assigned to the Family Division in the usual course, but the assigned Family Division Judge (or the SBD Judge, on his own initiative) may refer the case to the SBD for the limited purpose of determining the business property issues.

⁷ Or such other date as reasonably determined by the Chief Judge.

Date”) no new cases will be assigned to him from those divisions. Beginning as of the Commencement Date, only cases qualifying for the SBD under paragraph II(A) above will be assigned to Judge Yates until further order or in accordance with paragraph III(C) below.

- C) The Chief Judge will monitor Judge Yates’ workload and the demands of his docket as he depletes his existing inventory of Family and Civil/Criminal Division cases and builds up the SBD, and will take steps necessary to balance his workload with that of the other judges of the Court.
- D) Judge Yates will be required to attend at least one free training program annually, as provided by the American College of Business Court Judges, with his incidental expenses for travel and lodging to be paid by the Court.
- E) If, for any reason, Judge Yates is unable to complete this assignment in the SBD, his replacement shall be appointed by the sitting Chief Judge, at his or her discretion, which appointment may require the approval of the State Court Administrative Office.

IV) Specialized Business Docket Case Management

The Court will issue a scheduling order pursuant to MCR 2.401(B)(2) when a case is assigned to the SBD. The scheduling order shall contain the following provisions:

A) Initial Pretrial Disclosures.

The parties will make initial pretrial disclosures within twenty-eight (28) days after initial pleadings are concluded or within twenty-eight (28) days after the case is assigned to the SBD. These disclosures must include all of the following, to the extent applicable:

1. The name and, if known, address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment. Such disclosure shall include a general description of the subject of that information.
2. A copy, or description by category and location, of all documents, electronically stored information and tangible things that the disclosing party has in its possession, custody or control and may use to support its claims or defenses, unless the use would be solely for impeachment.
3. A computation of each category of damages claimed by the disclosing party, the documents or other evidentiary material⁸

⁸ Unless such material is privileged or otherwise protected from disclosure.

on which each computation is based, including materials bearing on the nature and extent of damages suffered.⁹

4. Any insurance agreement¹⁰ under which an insurer may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.
5. Issues that the disclosing party believes are likely to be resolved by motion.
6. Issues that the disclosing party believes are presently ready for resolution.
7. A list of citations to case law that the disclosing party believes represents the most significant cases relevant to the resolution of each issue in the case.
8. Prior decisions from SBD cases applicable to the instant case.

B) Joint Pretrial Report.

Counsel¹¹ will have twenty-eight (28) days to review each other's disclosures and are jointly responsible for preparing and submitting a pretrial report, the contents of which shall include:

1. A description of claims and defenses, together with the facts which support them, and not merely the labels.
2. Identification of key witnesses.
3. Anticipated discovery, and a timeline for its completion.
4. Issues with the initial disclosures, if any.
5. Case law the parties would like the SBD Judge to consider.
6. Issues the parties believe are ready for resolution.
7. Identification of the existence of prior settlement discussions, if any, and their current status; existence of arbitration and mediation agreements, if any; alternative dispute resolution ("ADR") possibilities considered and proposed; and known or anticipated barriers to resolution, financial and otherwise.

⁹ To be made available for inspection and copying pursuant to MCR 2.310.

¹⁰ To be made available for inspection and copying pursuant to MCR 2.310.

¹¹ All references to "counsel" in this Order shall apply to (i) counsel for represented parties, and (ii) the parties themselves if unrepresented. This terminology shall not be construed as implying that an unrepresented party is somehow disadvantaged or limited by the SBD Court. Such party shall be treated as any *pro per* party is otherwise treated in the Civil Division of the Circuit Court.

8. Technological capabilities of counsel to eFile, ability to participate in teleconferences with the Court, and the geographical location of clients and their ability to appear in person for Court conferences.
9. Whether a Court-appointed expert would assist resolution.

C) Initial Court Conference.

Approximately sixty (60) days after the Answer has been filed,¹² the SBD Judge will hold an initial conference which shall be attended by counsel (attendance of the parties optional) to address the following matters:

1. Whether the case is properly assigned to the SBD.
2. Whether some type of ADR is suitable and, if so, when and what type should be employed.
3. Issues ripe for resolution by the Court.
4. Any issues raised in the Joint Pretrial Report.
5. Whether a meeting with the SBD Judge attended by the parties would be appropriate.
6. Schedule for the litigation.
7. Discovery issues and necessity for any protective orders.
8. Use of technology, mandatory use of eFiling, service by mail, and motion hearings and court conferences via conference call or video conference.
9. When counsel expect to be able to report back to the Court regarding progress on resolving or litigating the case.
10. Whether the parties will consent to expedited motion hearing time.¹³
11. Prior SBD decisions relevant to the case.

D) Case Management Plan.

Following the Initial Court Conference, the SBD Judge shall prepare a detailed case management plan based on the conference discussions. The plan will include requirements for interim pretrial reports by counsel and status conferences with the Court.

¹² Or, if the case is not immediately referred to the SBD upon commencement, such other time as the SBD Judge reasonably determines is appropriate.

¹³ Which the Court reserves the right to order on its own initiative pursuant to MCR 2.119.

E) Use of Technology.

Parties unable to appear for Court proceedings may be permitted to participate from remote locations through technological means, if advance arrangements are made with the Court.

V) Business Docket Procedural Mechanisms

A) Assignment to the SBD.

For applicable cases filed on or after the Commencement Date, all cases described in paragraph IIA above will be assigned to the SBD by the following methods:

1. When an applicable case is filed, the plaintiff will file a face sheet to the complaint, reciting "Specialized Business Docket requested." If plaintiff has not done so, and defendant believes the case meets the eligibility criteria of paragraph IIA, defendant may file a face sheet to the answer with the same recitation.
2. When all parties agree to and file a stipulation and order for assignment to the Specialized Business Docket.
3. When any judge of the Court refers the case for assignment to the SBD, after preliminary review and approval by the SBD Judge.

B) Removal from the SBD.

1. Any party may file a motion¹⁴ to remove a case from the SBD to the Civil/Criminal or Family docket, whichever is applicable, on the ground that the case does not meet the eligibility criteria of paragraph IIA.
2. The SBD Judge may remove a case from the SBD to the Civil/Criminal or Family docket, whichever is applicable, with approval of the Chief Judge.
3. If for any reason the SBD Judge is recused or disqualified from hearing a case, that case will be reassigned by lot to a judge of the Civil/Criminal Division, who will promptly convene a

¹⁴ Such motion shall not require a motion fee if the SBD Judge determines that the case did not belong in the SBD. However, if the SBD Judge determines that the case properly belongs in the SBD, he may, in his discretion, order the moving party to pay the motion fee after such determination.

status conference with all parties to establish a schedule for further proceedings in the case.

C) Case Tracking.

Cases assigned to the SBD will be assigned a unique docket code identifying its category as set forth in paragraph IIA (1-19), which will be used for tracking purposes and statistical analysis.

D) Opinions.

1. In all non-jury trials, the SBD Judge will issue written opinions, which will be made available to the local bar and to the public by posting them on the Court's website.
2. In all jury trials, the SBD Judge will issue a brief written description of the verdict which will be made available, along with the Court's written instructions to the jury, to the local bar and to the public by posting them on the Court's website.
3. The SBD Judge will issue written or oral opinions on summary dispositions, final judgments, or other significant proceedings held to resolve disputed issues in the case. These opinions will be made available to the bar, and to the public, by posting them on the Court's website and, when rendered orally from the bench, will be transcribed at Court expense for that purpose.

VI) Oversight and Evaluation

A) Advisory Committee.

Subsequent to the approval of this Order by the State Court Administrative Office and prior to the Commencement Date, the Chief Judge of this Court will appoint an advisory committee, which shall include the SBD Judge, the Court Administrator of this Court, and at least one civil attorney actively practicing in Kent County, which will meet quarterly to assess the progress of the SBD.

B) User Survey.

Upon the closing of any case on the SBD, all litigants and parties will be surveyed to determine their satisfaction with the process, specifically addressing the quality, savings, and overall efficiency of the SBD.

C) Reporting.

On an annual basis, the Advisory Committee will evaluate the success of the pilot project and compile a written report to be submitted to the Court and the State Court Administrator's Office.

VII) Expiration

Unless otherwise directed by the Supreme Court or the State Court Administrator or adjusted by the Chief Judge, this pilot project, establishing a specialized business docket in the 17th Circuit Court, shall continue until the Expiration Date.

IT IS SO ORDERED.

Dated: October 18, 2011

Donald A. Johnston (P15554)
Chief Circuit Judge